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in the absence of special agreement, the parties are deemed to have contracted.

[Ed. Note.—For other cases, see Customs and Usages, Cent. Dig. §§ 30-33; Dec. Dig. § 15.* 13 Va.-W. Va. Enc. Dig. 416.]

3. Customs and Usages (§ 17*)—Varying Contract—Evidence.—

Where the minds of parties to a written contract have met in an explicit understanding of the terms thereof, extraneous evidence of a custom which alters or varies the terms of such contract is inadmissible.

[Ed. Note.—For other cases, see Customs and Usages, Cent. Dig. § 34; Dec. Dig. § 17.* 3 Va.-W. Va. Enc. Dig. 408.]

Error to Circuit Court, Russell County.

Action by E. Sutherland & Co. against H. C. Gibson. Judgment for defendant, and plaintiffs bring error. Reversed and remanded.

Finney & Wilson, of Lebanon, for plaintiffs in error.

S. B. Quillen, of Lebanon, for defendant in error.

FIELDS-WATKINS CO. et al. v. HENSLEY et al.

Sept. 9, 1915.

[86 S. E. 113.]

1. Fraudulent Conveyances (§ 132*)—Retention of Possession—Statutory Provisions.—A seller, executing a bill of sale, remained in possession, and when the property was released from a prior deed of trust it was not turned over to the buyer, but was turned over to the seller, who receipted to the trustee in the deed of trust for the same. The possession was never changed from that of the seller to the buyer. The bill of sale was not recorded. Held, that the sale was void as against creditors of the seller, under Code 1904, § 2465, making every bill of sale, when possession remains with the seller, void as to creditors, except from the time it was recorded in the county or corporation wherein the property may be.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig. §§ 407-424; Dec. Dig. § 132.* 6 Va.-W. Va. Enc. Dig. 592.]

2. Execution (§ 185*)—Rights of Third Persons—Statutes—Construction.—Under Code 1904, § 3001, a claimant to property sought to be taken under execution against another must give a suspending bond, and within 30 days thereafter proceed to have title to the property settled; and the giving of the suspending bond and the bringing of the proceedings within the statutory time are indispensable to jurisdiction of the court to determine title.

[Ed. Note.—For other cases, see Execution, Cent. Dig. §§ 552-556, 558; Dec. Dig. § 185.* 5 Va.-W. Va. Enc. Dig. 407.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. Execution (§ 196*)—Claim to Property—Trial—Jury Question.—Where, in proceedings by a claimant to settle title to property taken under execution against another, the time of giving the suspending bond was shown by the bond, and the date of the beginning of the proceedings to settle title appeared on the face of the record, it was error to submit to the jury the question as to when the suspending bond was given and when the proceeding was instituted, but the court itself must determine the questions.

[Ed. Note.—For other cases, see Execution, Cent. Dig. § 576; Dec. Dig. § 196.* 5 Va.-W. Va. Enc. Dig. 407.]

Error to Circuit Court, Dickenson County.

Petitions by R. E. Hensley and J. B. Crouch, claiming the ownership of personalty, on which executions in favor of the Fields-Watkins Company and the Barker-Jennings Hardware Company against A. E. Sprinkle and another had been levied. From a judgment for petitioners, execution creditors bring error. Reversed, annulled, and entered.

Sutherland & Sutherland and *W. W. Bird*, all of Lebanon, for plaintiffs in error.

Skeen & Skeen, of Clintwood, for defendants in error.

FULTON *v.* COX et al.

Sept. 9, 1915.

[86 S. E. 133.]

1. Deeds (§ 211*)—Cancellation—Fraud—Sufficiency of Evidence.—Evidence in a suit by heirs of the grantor for cancellation of a deed held insufficient to constitute the necessary clear proof of the alleged fraud.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 637-647; Dec. Dig. § 211.* 11 Va.-W. Va. Enc. Dig. 890.]

2. Equity (§ 147*)—Multifariousness.—If convenience in the administration of justice is accomplished by the mode of proceeding adopted, the objection of multifariousness will not lie, unless the course pursued is so injurious to a party as to make it inequitable to accomplish the general convenience at his expense.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 340; Dec. Dig. § 147.* 5 Va.-W. Va. Enc. Dig. 130.]

3. Landlord and Tenant (§ 28*)—Leases—Fraud.—A lease of property at the request of the lessee for a lump sum, for the lives of himself and wife, is not fraudulent merely because it results to the lessor's advantage through the early death of the life tenants.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 82-84; Dec. Dig. § 28.* 7 Va.-W. Va. Enc. Dig. 71.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.